

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

Ernest Cannon, Individually and as the )  
Guardian of Kristen Cannon )  
  )  
  )  
Plaintiff,                                    )  
  )  
  )  
vs.    ) Case No. 4:15-cv-1600  
  )  
  )  
Blue Cross Blue Shield of Texas, a Division )  
of Health Care Service Corporation )  
  )  
  )  
Defendant

**APPENDIX TO NOTICE OF REMOVAL**

Defendant Blue Cross Blue Shield of Texas, a Division of Health Care Service Corporation (“BCBSTX”), respectfully files the following Appendix to Notice of Removal.

Exhibit 1: Docket Sheet from Cause No. 15-13994-012-10; Ernest Cannon, Individually and as Guardian of Kristen Cannon v. Blue Cross Blue Shield of Texas; In the 12th District Court, Madison County, Texas. (This document has been requested from the Madison County District Clerk, and this Appendix will be supplemented upon receipt.)

Exhibit 2: Original Citation to Blue Cross Blue Shield of Texas in Cause No. 15-13994-012-10, issued May 5, 2015.

Exhibit 3: Original Petition in Cause No. 15-13994-012-10, filed May 5, 2015.

Exhibit 4: Original Answer in Cause No. 15-13994-012-10.

Exhibit 5: List of all counsel of record

Exhibit 6: Declaration of Andrew F. MacRae

Respectfully submitted,

By:/s/ Andrew F. MacRae

ANDREW F. MACRAE

State Bar No. 00784510

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[andrew@lpfirm.com](mailto:andrew@lpfirm.com)

Attorneys for Defendant

THE STATE OF TEXAS

Delivered  
5/11/15

NOTICE TO THE DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney does not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

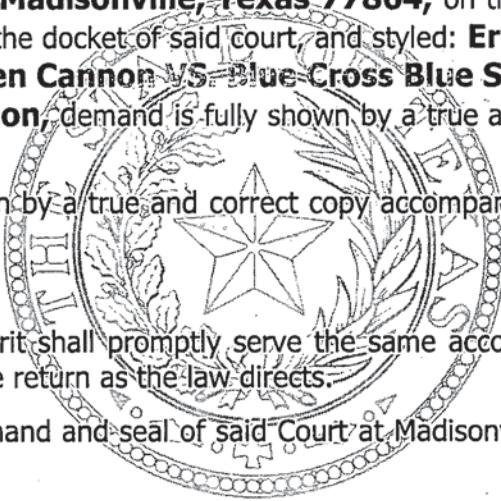
**To: Blue Cross Blue Shield Of Texas, A Division Of Health Care Services Corporation, may be served through its registered agent, Corporation Service Company, 211 East 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218**

Greeting:

You are hereby commanded to appear by filing a written answer to the **Plaintiff's Original Petition**, before ten o'clock A. M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable District Court **12<sup>th</sup> Judicial District of Madison County, Texas** at the Court House of said County in Madisonville.

Said **Plaintiff's Original Petition**, was filed in said court by, **Kevin R. Knight**, an Attorney whose address is, **P.O. Box 925, Madisonville, Texas 77864**, on the **5<sup>th</sup> day of May A.D. 2015**, in this case, **15-13994-012-10** on the docket of said court, and styled: **Ernest H. Cannon, Individually And As The Guardian Of Kristen Cannon VS Blue Cross Blue Shield Of Texas, A Division Of Health Care Service Corporation**; demand is fully shown by a true and correct copy accompanying this citation and made a part hereof.

The nature and is fully shown by a true and correct copy accompanying this citation and made a part hereof.



The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Madisonville, Texas, this **5<sup>th</sup> day of May, A.D., 2015.**

Clerk of the Court

Rhonda Savage

101 W. Main, Rm. 226

Madisonville, Texas 77864

Attest:

Rhonda Savage

Clerk, District Court

By:

Nicole Warner

Rule 106: "the citation shall be served by the officer delivering to each defendant, in person, a true copy of the citation with the date of delivery endorsed thereon and with a copy of the petition attached thereto

NO. 15-13994-01Z-10

ERNEST H. CANNON, INDIVIDUALLY  
AND AS THE GUARDIAN OF KRISTEN  
CANNON

VS.

BLUE CROSS BLUE SHIELD OF  
TEXAS, A DIVISION OF HEALTH CARE  
SERVICE CORPORATION

IN THE DISTRICT COURT

MADISON COUNTY, TEXAS

12<sup>th</sup> JUDICIAL DISTRICT

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PLAINTIFFS' ORIGINAL PETITION

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COMES NOW, ERNEST H. CANNON, INDIVIDUALLY AND AS THE GUARDIAN  
OF KRISTEN CANNON, hereinafter called Plaintiffs and files suit against **BLUE CROSS**  
**BLUE SHIELD OF TEXAS, A DIVISION OF HEALTH CARE SERVICE CORPORATION**,  
hereinafter called Defendant and would show unto the Court and jury the following:

I.

The Plaintiffs intend to pursue this matter pursuant to a Level 2 Discovery Control Plan.

II.

The Plaintiffs at all times material hereto are resident citizens of the State of Texas.

Defendant, **BLUE CROSS BLUE SHIELD OF TEXAS, A DIVISION OF HEALTH CARE SERVICES CORPORATION**, conducts business in the State of Texas and may be served with process by serving its registered agent, Corporation Service Company, 211 East 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218.

III.

Venue is proper and permissive in Madison County, Texas pursuant to §15.002, §15.032 and §15.038 of the Texas Civil Practice & Remedies Code. Additionally , venue is proper and permissive in Madison County, Texas pursuant to §17.56 of the Texas Deceptive Trade and Practices Act.

IV.

The Plaintiffs would show that proper notice was provided to the Defendant prior to filing suit pursuant to §38.001 and §38.002 of the Texas Civil Practice & Remedies Code, §541.154 of the Texas Insurance Code and §17.505 of the Texas Deceptive Trade Practices Act.

V.

**REQUEST FOR DISCLOSURE**

Plaintiffs include within these pleadings a demand for disclosure and/or a disclosure request as provided for by Rule 194 of the Texas Rules of Civil Procedure. Defendant is requested to disclose within fifty (50) days of this request, the information and material described in Rule 194.2 of the Texas Rules of Civil Procedure.

VI.

**RULE 197.3 NOTICE**

In accordance with Rule 193.7 of the Texas Rules of Civil Procedure, the Plaintiffs hereby serves notice to all parties that the Plaintiffs reserve the right to use any documents and/or materials produced by any Defendant at any pre-trial proceeding or trial on the merits.

VII.

FACTUAL BACKGROUND

Plaintiffs, ERNEST H. CANNON, INDIVIDUALLY AND AS THE GUARDIAN OF KRISTEN CANNON, would show unto the Court and jury that a health insurance policy was issued by Defendant, BLUE CROSS BLUE SHIELD OF TEXAS. The specific policy is known as the Blue Choice Gold PPO 011. The group and member ID number on the subject policy are 122006/923799119. Defendant, BLUE CROSS BLUE SHIELD OF TEXAS, has refused and continues to refuse to pay certain aspects of medical treatment for Plaintiff, KRISTEN CANNON, which serves as the basis of the Plaintiffs' suit against the Defendant.

VIII.

BREACH OF CONTRACT

The Plaintiffs bring suit against the Defendant for breach of contract. In this regard, the Plaintiffs would show that the subject insurance policy constitutes a binding contract that at all times material hereto was in full force and effect with all premiums paid. Defendant, BLUE CROSS BLUE SHIELD OF TEXAS, has refused and continues to refuse to pay for certain medical treatment for Plaintiff, KRISTEN CANNON, which is medically necessary constituting a breach of the insurance contract and a proximate cause of the Plaintiffs' damages for which they sue. In addition to actual damages, the Plaintiffs bring suit for reasonable and necessary attorney fees pursuant to §38.001 of the Texas Civil Practice & Remedies Code. In accordance with §38.002 of the Texas Civil Practice & Remedies Code, the undersigned attorney presented the claim that is the subject of this

suit to the Defendant on February 5, 2015. As of the date of filing suit more than 30 days have elapsed without a response or an offer of settlement by the Defendant.

IX.

INSURANCE CODE VIOLATIONS

A. Unfair Methods of Competition and Unfair or Deceptive Acts and Practices

The Plaintiffs bring suit against Defendant, **BLUE CROSS BLUE SHIELD OF TEXAS**, pursuant to Chapter 541 of the Texas Insurance Code. In particular and at the very least, §541.051(1)(A)&(B), §541.060, §541.061 and §541.151. Additionally, the Plaintiffs seek to recover costs of court and reasonable and necessary attorney fees pursuant to §541.152 of the Texas Insurance Code.

B. Processing and Settlement of Claims

The Plaintiffs further bring suit pursuant to §542 of the Texas Insurance Code, commonly referred to as the Unfair Claim Settlement Practices Act, including §542.003 and other pertinent provisions of §542, including subchapter B, known as the Prompt Payment of Claims Act. In addition, the Plaintiffs seek to recover not only the actual damages, but interest at a rate of 18% per year together with reasonable and necessary attorney fees which are allowed to be taxed as costs of court.

X.

DECEPTIVE TRADE PRACTICES ACT

The Plaintiffs further bring a claim against Defendant, **BLUE CROSS BLUE SHIELD OF TEXAS**, pursuant to §17.46 and §17.50 of the Texas Deceptive Trade Practices Act. In particular, the conduct of said Defendant is a producing cause of the

damages sustained by the Plaintiffs. In addition to actual damages, should it be found by the trier of fact that the conduct of the Defendant was committed knowingly and/or intentionally, the Plaintiffs seek to recover mental anguish and treble damages. Finally, the Plaintiffs seek to recover reasonable and necessary attorneys fees.

XI.

It is yet too early to ascertain the full extent of the damages sustained by Plaintiffs, but they certainly exceed the minimum jurisdictional limits of this Court. In accordance with Rule 47 of the Texas Rules of Civil Procedure, Plaintiffs would show that they seek monetary damages of greater than \$50,000.00, but no more than \$75,000.00.

**WHEREFORE, PREMISES CONSIDERED**, Plaintiffs pray that the Defendant be cited in terms of law to appear and answer herein; and that upon final trial or hearing hereof, judgment be rendered against Defendant; that Plaintiffs have pre-judgment and post-judgment interest at the legal rate; that Plaintiffs have and recover their costs of court in this behalf expended; and that Plaintiffs have such other and further relief, both general and special, at law and in equity, to which they may show themselves justly entitled, and in duty bound will ever pray.

**PLAINTIFFS DEMAND A TRIAL BY JURY IN THIS CAUSE.**

Respectfully submitted,

ROGER KNIGHT, JR., INC.  
ATTORNEY AT LAW  
P. O. BOX 925  
MADISONVILLE, TEXAS 77864  
(936) 348-3543  
(936) 348-5433(FAX)

BY:  
KEVIN R. KNIGHT - 11601400  
ATTORNEY FOR PLAINTIFFS

CAUSE NO. 15-13994-012-10

ERNEST H. CANNON, INDIVIDUALLY AND AS NEXT FRIEND OF KRISTEN CANNON	)	IN THE DISTRICT COURT
Plaintiff	)	
v.	)	MADISON COUNTY, TEXAS
	)	
BLUE CROSS BLUE SHIELD OF TEXAS, A DIVISION OF HEALTH CARE SERVICE CORPORATION	)	
Defendant	)	12 <sup>TH</sup> JUDICIAL DISTRICT

**ORIGINAL ANSWER**

Defendant Blue Cross Blue Shield of Texas, a division of Health Care Service Corporation, a Mutual Legal Reserve Company (“BCBSTX”), files the following Original Answer to Plaintiff’s Original Petition.

**General Denial**

BCBSTX enters a General Denial pursuant to Rule 92.

WHEREFORE, PREMISES CONSIDERED, Defendant Blue Cross Blue Shield of Texas requests that Plaintiff take nothing by his suit, and that BCBSTX be awarded its costs of court. BCBSTX further requests such other relief, both legal and equitable, to which it may show itself justly entitled.

Respectfully submitted,

By: /s/ Andrew F. MacRae

ANDREW F. MACRAE

*State Bar No. 00784510*

LEVATINO|PACE LLP

1101 S. Capital of Texas Highway

Building K, Suite 125

Austin, Texas 78746

Tel: (512) 637-1581

Fax: (512) 637-1583

[andrew@lpfirm.com](mailto:andrew@lpfirm.com)

ATTORNEY FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Original Answer has been forwarded to all parties of record, this 29th day of May, 2015, as follows:

***Via Facsimile; 936/348-5433***

Kevin R. Knight  
Roger Knight, Jr., Inc.  
P.O. Box 925  
Madisonville, Texas 77864

---

/s/ Andrew F. MacRae

Andrew F. MacRae

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
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  )  
Blue Cross Blue Shield of Texas, a Division )  
of Health Care Service Corporation        )  
  )  
  )  
Defendant

**LIST OF ALL COUNSEL OF RECORD**

Plaintiff's Counsel:

Kevin R. Knight  
State Bar No. 11601400  
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Defendant's Counsel:

Andrew F. MacRae  
State Bar No. 00784510  
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1101 S. Capital of Texas Hwy  
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Austin, Texas 78746  
Tel: (512) 637-1581  
Fax: (512) 637-1583

***EXHIBIT 5***

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

Ernest Cannon, Individually and as Guardian )  
of Kristen Cannon )  
  )  
  )  
Plaintiff   )  
   )  
vs.   )  
   )  
Blue Cross Blue Shield of Texas, a Division )  
of Health Care Service Corporation )  
   )  
Defendant   )

Case No. 4:15-cv-1600

**DECLARATION OF ANDREW F. MacRAE**

STATE OF TEXAS                                       §

COUNTY OF TRAVIS                                   §

1. My name is Andrew F. MacRae. I am over the age of eighteen (18) years and fully competent in all respects to make this Declaration. I have personal knowledge of the facts stated herein and they are true and correct. I am counsel of record for Blue Cross Blue Shield of Texas, a Division of Health Care Service Corporation.

2. On December 31, 1998, Blue Cross Blue Shield of Texas, Inc. merged with Blue Cross Blue Shield of Illinois into Health Care Service Corporation (“HCSC”), which is a Mutual Legal Reserve Company. HCSC is an Illinois corporation, with its principal place of business in Chicago, Illinois. Since December 31, 1998, Blue Cross Blue Shield of Texas (“BCBSTX”) has been, and still is, a division of HCSC.

3. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 8, 2015.

/s/ Andrew F. MacRae

Andrew F. MacRae

**EXHIBIT 6**